BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission to Conduct an Investigation on Intrastate Switched Access Charge Policies and Regulation Codified in NEB. REV. STAT. Section 86-140.	))))))	Application No. C-4145/NUSF-74/PI147

COMMENTS OF WINDSTREAM NEBRASKA, INC.

On February 24, 2009, the Nebraska Public Service Commission ("Commission") entered an Opinion and Findings inviting interested persons to submit comments in the above captioned docket by April 23, 2009. Pursuant to the Commission's Opinion and Findings, Windstream Nebraska, Inc. ("Windstream") respectfully provides the following comments.

Introduction and Background

In July 2008, Qwest sought to increase its intrastate switched access rates from a weighted average of approximately $0.021 per minute of use ("mou") to approximately $0.048 per mou.[1] On July 29, 2008, the Commission suspended Qwest's tariff filing that contained the proposed switched access rate increases and it opened an investigation "so that it can determine whether Qwest's filings comply with the provisions of Neb. Rev.

[1] *In the Matter of Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates.* C-3945/NUSF-60.02/PI-138, Order Opening Docket, Suspending Rates and Setting Procedural Schedule, (July 29, 2008).

Stat. § 86-140, whether the rates are fair and reasonable, and to determine whether implicit subsidies have been removed from Qwest's intrastate access rates."[2]

On February 3, 2009, the Commission denied Qwest's proposed rate increase based on its conclusion that Qwest failed to provide sufficient supporting evidence that its proposed rate was fair and reasonable pursuant to Nebraska state law.[3]

Subsequently, on February 24, 2009, the Commission invited interested parties to comment on the Commission's progress in fulfilling the legislative policies regarding intrastate switched access and universal service. Windstream's comments will address the issues raised by the Commission regarding whether the Commission's initial policy goals set out in 1999 for intrastate switched access reform are still valid today, whether such goals have been achieved, and whether further steps, if any, should be considered?

The Commission also sought comment on its "overarching policy objectives and goals" with respect to intrastate switched access rates. These policy objectives and goals were discussed by the Commission in its Findings and Conclusions issued in 1999 regarding its investigation into the structure of intrastate switched access charges and establishing a Nebraska Universal Service Fund ("NUSF").[4] The primary goals outlined in that Order included the reduction of implicit support from intrastate switched access rates over a period of time, recovery of the lost revenue from local rate increases and recovery from NUSF during a transition period.

The Commission also sought comment on the "minimum objective evidentiary criteria to be considered by the Commission in intrastate switched access rate dockets

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[2] Id. at 6 and 7.

[3] *In the Matter of Nebraska Public Service Commission to conduct an investigation of Qwest Corporation's Proposed Switched Access Charge Rates.* C-3945/NUSF-60.02/PI-138, Order, (February 3, 2009).

under Neb. Rev. Stat. §86-140." This Nebraska state statute provides, in part, that "the implicit support mechanisms in intrastate access rates throughout the state may be replaced while ensuring that local service rates in all areas of the state remain affordable."[5]

"Fair and Reasonable" Switched Access Rates

Determining whether the Commission's 1999 goals have been realized, whether implicit subsidies should be considered to have been removed and whether intrastate switched access rates should be deemed fair and reasonable all are issues which seem to be inextricably linked. In 1999, a Commission order required each incumbent local exchange carrier ("ILEC") to file a switched access transition plan to address these issues. These plans permitted non-rural carriers to implement intrastate switched access reform over a three-year period and it permitted rural local exchange carriers four years to complete their full implementation. The transition plans reduced intrastate switched access rates, but also allowed ILECs the opportunity to recover the revenue reductions resulting from the switch access rate decreases through a combination of increases in local end user rates to specific target rates and receiving distributions from the newly established NUSF program. Upon completion of those transitional plans, ILECs' intrastate switched access rates would be considered by the Commission to be free of implicit subsidies. In fact, the Commission asserted that "Should an access charge complaint be filed against an ILEC, the Commission intends to give considerable weight

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[4] *In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform.* Application No. C-1628, Findings and Conclusions, (January 13, 1999).

to the fact that (a) the company has a Commission-approved transition plan, and (b) the carrier has met or exceeded its commitments during the transition plan."[6] All ILECs in the state of Nebraska have completed their implementation of their transition plans.

To the extent that one of the questions confronting the Commission is how to determine if an intrastate switched access rate is fair and reasonable, Windstream suggests that the Commission has already concluded that the existing switched access rates are fair and reasonable because the implicit subsidies have been removed. In fact, in 2003 the Commission investigated ALLTEL's (Windstream's predecessor) Transition Plan (Docket No. C-1628) and related tariff filings and concluded that all implicit subsidies had been removed because its intrastate rates were "reasonably similar to interstate rates."[7] Accordingly, Windstream's existing intrastate switched access rates, as of the full implementation of the transition plan, have been deemed fair and reasonable according to the Commission's own standards and requirements.

Similarly, in September 2002, the Commission entered its Findings and Conclusion regarding Qwest's transitional plan. Under the terms of this plan, Qwest's switched access rates in effect at the time the transition plan was fully implemented also were free of implicit subsidies and, therefore, considered fair and reasonable by the Commission.

Since existing rates are fair and reasonable, as ILECs had previously 'met or exceeded' transition plan commitments, filings that require compliance with Neb. Rev.

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[5] *In the Matter of the Nebraska Public Service Commission, on its won motion, seeking to establish a long-term universal service Funding mechanism.* Application No. NUSF-26, Progression Order No. 2, at 7, (August 27, 2002).

[6] 1999 Findings and Conclusion at page 3.

[7] *In the Matter of the Commission on its own motion, seeking to determine access costs for ALLTEL.* Application No. NUSF-18, Order Closing Docket, (December 16, 2003). Windstream further notes that the

Stat. §86-140 should be limited to instances where the carrier seeks to *increase* its switched access rates, such as the increases sought by Qwest. Therefore, based on these facts, and consistent with §86-140, any intrastate switched access rates that exceed the rates approved by the Commission in a local exchange carrier's transition plan would require a showing that the proposed increases result in fair and reasonable rates.[8]

The Future of the Nebraska USF System

This Commission has been on the forefront of addressing the issues of implicit support, intrastate access reform, local rate benchmarks and universal service support for many years. It began investigating these very complex issues in 1997, provided the industry its detailed plan in 1999, and has revised this plan several times over the past ten years. Although recent dealings with these issues may have been originally necessitated by Qwest's pursuit of an increase to its intrastate switched access rates, the Commission has provided all concerned parties an opportunity to comment in this proceeding on what further steps need to be considered.

Windstream suggests that comprehensive universal service reform is needed within the state of Nebraska. Windstream recommends that the Commission initiate a proceeding to address certain fundamentally flawed aspects of the NUSF. Under the current system, NUSF support may not be directed to all areas of the state with the highest costs to serve. Although the original NUSF system may have effectively enabled the shift of revenue from implicit subsidies to explicit sources, carriers are now losing

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Commission did not require full mirroring of interstate rates to consider implicit subsidies to have been removed from intrastate rates.

[8] To the extent the Commission determines that it is in the public interest to establish a "safety valve" for local exchange carriers with a rate of return below a reasonable rate for supported services (as indicated on

their explicit support as a result of the earnings test set forth in the NUSF-EARN form. Windstream recognizes that no carrier was guaranteed explicit support beyond the transitional period, which ended in 2003. However, now that we are well beyond the transition period, Windstream recommends the Commission take the actions necessary to ensure explicit support is directed to all high cost wire centers of the state. Furthermore, NUSF support should be based on forward-looking costs to encourage providers to operate efficient networks.[9] Under the current system, efficient service providers are being penalized as a result of calculations based on embedded costs and the use of arbitrary earnings tests.

Windstream suggests that such Commission action may also alleviate carriers' need to increase intrastate switched access rates that were previously deemed to be free from implicit subsidies and fair and reasonable.

Conclusion

The Commission has successfully implemented meaningful access reform in a thoughtful, rational manner over the past ten years. This has been accomplished through the reduction of implicit subsidies from intrastate switched access rates and by providing carriers with an opportunity to recover this lost revenue through explicit means including retail rate increases and the establishment of the NUSF. This has resulted in existing switched access rates that are fair and reasonable. Therefore, carriers should only be

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its NUSF-EARN form), the Commission should consider implementing a mechanism similar to the federal Low-end Formula Adjustment Mechanism ("LFAM").

[9] Windstream attaches a copy of its *ex parte* RE: High Cost Universal Service Support, WC Docket No. 05-337 and Federal-State Joint Board on Universal Service, CC Docket No. 96-45, as filed with the Federal Communications Commission on April 2, 2007 and previously provided by Windstream to the Commission as part of Windstream's Comments in Application No. NUSF-50, Progression Order No. 3 on April 16, 2007.

required to make a showing under Neb. Rev. Stat. §86-140 if they propose to increase their intrastate switched access rates. Finally, the current NUSF system is outdated and needs comprehensive reform because the current distribution system fails to direct support to all high cost areas of the state and because efficient carriers are losing much needed support as a result of the use of arbitrary earnings tests.

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Access Charge Policies and	)	
Regulation Codified in	)	
NEB. REV. STAT. Section 86-140.	)	

Signature Page

I, Cesar Caballero, do attest that the Comments being filed on behalf of Windstream Nebraska, Inc. in this proceeding are true and correct to the best of my knowledge.

Date: April 23, 2009

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April 2, 2007

Commissioner Deborah Taylor Tate
Federal Chair, Federal-State Joint Board on Universal Service
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Commissioner Ray Baum
State Chair, Federal-State Joint Board on Universal Service
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RE: High Cost Universal Service Support, WC Docket No. 05-337
Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Commissioner Tate and Commissioner Baum:

Windstream Communications[1] ardently supports the Joint Board and Federal Communications Commission's review of the high-cost mechanism[2] and is encouraged by the

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[1] Windstream is an S&P 500 communications company formed in the summer of 2006 through the spin-off of Alltel's wireline business and merger with VALOR Communications Group. Windstream provides voice, broadband, and entertainment services to customers in rural areas of 16 states.

[2] The Commission originally asked the Joint Board to review the high-cost mechanism in June 2004. *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, 19 FCC Rcd. 11538 (released June 28, 2004). Since that time, the Joint Board has considered various ways to reform the current system and numerous parties have filed comments in this docket forming a voluminous record supporting the need for fundamental reform. See *Federal-State Joint Board on Universal Service Seeks Comments on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, Public Notice, CC Docket No. 96-45, FCC 04J-2 (released August 16, 2004); *Federal-State Joint Board on Universal Service Seeks Comments on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, Public Notice, CC Docket No. 96-45, FCC 05J-1 (released August 17, 2005); *Federal-State Joint Board on Universal Service Seeks Comments on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, Public Notice, CC Docket No. 96-45, FCC 06J-1 (released August 11, 2006).

Joint Board's February 20th *en banc* hearing. As a result of the hearing and indications that the Joint Board will provide a recommendation soon, parties have submitted additional *ex parte* comments proposing reform, which have focused the debate. Windstream agrees with some of these suggestions but, as described in this letter, its views differ on several critical issues in important ways.

Substantial reform of the high-cost mechanism is long overdue and urgently needed. Simply put, the current universal service high-cost mechanism falls well short of accomplishing the public policy goals set out in section 254 of the Act.[3] The framework in place today is fundamentally flawed because it fails to target explicit support to high-cost areas to the detriment of many rural consumers. Moreover, the "rural" mechanism, which is based on embedded costs, provides higher levels of support to less efficient providers than perhaps is necessary. Likewise, the "non-rural" mechanism provides funding based on statewide averaged costs, which likely provides too little support in many cases. Complicating matters, the rules allow multiple Competitive Eligible Telecommunications Carriers (CETCs) to receive support based on other carriers' costs, which are often unrelated to the CETCs costs and based on different technologies. This has caused the fund size to balloon in recent years undermining the viability of universal service as a whole.

Reform is needed to bring the operation of the program in line with its main purposes: to provide specific, predictable, and sufficient support in high-cost areas; to preserve and advance universal service; and to ensure access to those services at rates that are affordable, reasonable, and comparable to rates in urban areas.[4] Continued reliance on implicit support through cost averaging over large geographic areas also undermines universal service in today's competitive environment. As the Nation's telecommunications infrastructure transforms from a circuit switched environment to one based on broadband and IP technology, it is imperative that the Joint Board recommend a framework that will provide a stable environment for carriers to continue the efficient deployment of broadband and advanced telecommunications networks in rural America.

As the largest provider focused almost exclusively on rural areas -- with over three million access lines and an average density of 25 access lines per square mile -- and one of the leading providers of broadband in the Nation, Windstream is uniquely positioned to comment in this proceeding.[5] Windstream is an efficient provider of telecommunications services to rural consumers and is not heavily reliant on receiving high-cost support from the Federal universal service fund.[6] Windstream does not seek reforms that would significantly alter the level of high-

[3] 47 U.S.C. §254.
[4] *Id.* at §254(b).
[5] Windstream has diverse experience with the complexity of the current universal service rules qualifying as both a "rural" and "non-rural" carrier for USF purposes. Windstream has "rural" study areas that are below 50,000 loops – and receive Local Switching Support as a result -- and study areas larger than 200,000 lines -- and, as such, receive less support than rural study areas with fewer lines but similar cost characteristics. In some cases our funding is limited, pursuant to §54.305 of the Commission's rules, by the amount of support that another provider received before we purchased their lines. *47 C.F.R. §54.305*. The benefit of this complexity to rural consumers and the public interest is often hard to discern.
[6] Windstream receives less than 1% of its total revenue from high-cost loop and model support, and less than 3% of its total revenues from all Federal high-cost support combined.

cost support it receives. Rather, Windstream's interest in reform is to rationalize universal service to better align the incentives for carriers serving rural areas to promote efficient operations and investment. As such, unlike many rural carriers who fear reform and might prefer to maintain the status quo, Windstream supports meaningful universal service reform. In order to be meaningful, however, reform must address the fundamental flaws inherent in the current broken system. As described below, these flaws include funding multiple CETCs without regard to their own costs, failing to target support to high-cost areas, providing too much support to some providers and not enough to others, all without an objective way to assure service is affordable to consumers. Although, growth of the fund in recent years has been significant and threatens the sustainability of the fund, the Joint Board should make specific recommendations to resolve the issues described above and not limit its focus to just controlling the size of the fund.

Merely freezing in place the current levels of support distributed under existing rules, as proposed by Verizon,[7] without modifying the way support is distributed is not in the public interest and does not further the principles set out in the Act. Instead, the Joint Board must consider the universal service goals set forth in the Act and recommend forward-looking and rational universal service reforms that target adequate explicit support to high-cost areas. To do otherwise, would perpetuate the inequities and insufficiencies in the current mechanism to the detriment of rural consumers and the Nation.

Control Growth By Addressing The Source – CETCs

As Chairman Martin observed at the recent Joint Board *en banc* hearing on this matter, "almost all the recent growth in high-cost universal service is largely as a result of CETC access to high cost support."[8] He noted that support going to CETCs has grown at a trend rate of over 100 percent a year since 2002, and from $1 million in 2001 to $1 billion in 2006. These trends are expected to continue in the future unless meaningful reform is adopted.[9]

There is no limit in the rules to the number of CETCs that may be designated for a particular area. As a result there are many areas with multiple mobile CETCs all receiving universal service support for serving many of the same consumers. Moreover, those CETCs receive support based on the incumbent local exchange carriers' costs rather than their own. So, not only are multiple CETCs allowed to line up for support, but the amount of support they ultimately receive is not related to their own costs (however those are defined).

To gain control of the exponential growth, the Joint Board should recommend limiting support to one fixed ETC and one mobile ETC per area. If the Joint Board is inclined to recommend that the FCC use reverse auctions to distribute support, the Commission could, as Verizon has suggested, start in areas with multiple mobile CETCs. This would provide a controlled environment to develop a reverse auction process. The Joint Board should also recommend suspending new designations until comprehensive high-cost mechanism reform can be achieved. Reducing multiple mobile CETCs to one per area, providing support based on the

[7] *See* Letter from Kathleen Grillo, Verizon, to Deborah Taylor Tate, FCC, and Ray Baum, Or. Pub. Serv. Comm'n, WC Docket No. 05-337 (filed Feb. 9, 2007).
[8] *See* Opening Remarks of Chairman Kevin Martin, Federal-State Joint Board on Universal Service *En Banc* Meeting at 4 (Feb. 20, 2007).
[9] *See id.* at 5.

CETC's own costs (or a reverse auction), and halting the proliferation of CETCs to new areas will control the problematic and systemic growth in the fund by addressing it at the source.

Target Support To Rural, High-Cost Areas

The Joint Board and the Commission should ensure adequate support is available for high-cost areas by actually targeting support to those areas, which the current mechanism fails to do. As a result of this failure, many rural and high-cost areas have been under-funded for years (and the converse is surely true in some areas as well). Windstream agrees with other carriers that have proposed targeting support at a wire center level and will not repeat those proposals here.[10] Averaging support over large areas (e.g., states or in some cases study areas) often prevents support from being directed to high-cost areas in a meaningful way, dampening investment in those high-cost areas. Targeting support to high-cost areas at the wire center level will direct support more directly, equitably, and rationally to benefit rural consumers.

Optimize Support Levels

Concurrent with targeting support to rural, high cost areas and controlling the source of the runaway growth in the fund, the Joint Board should recommend the adoption of a new methodology to calculate costs used to determine and distribute support to high-cost areas. The new calculation methodology should be based on forward-looking costs to encourage carriers serving rural consumers to efficiently operate and invest in their networks. The Commission could combine this cost methodology with improved targeting to ensure that support is fairly and reasonably distributed. The Commission could also designate funds made available from eliminating multiple mobile CETCs to support under-funded high-cost areas.

The current forward-looking model used by the Commission is inadequate and does not accurately estimate forward-looking costs. Substantial improvements have been made, however, in modeling of forward-looking costs.[11] Consistent with these improvements, the Commission can develop a more accurate and meaningful model. Of course, any model that is adopted should be designed to target support at the wire center level and should use geo-coded customer location information. This is particularly important for rural serving areas where accurate customer location information is critical to develop reasonably accurate estimates of the cost of providing universal service. Of course, Windstream recognizes that for the smallest companies (not small study areas held by larger companies), the practical reality may require the Joint Board to consider the continued use of embedded costs because modeling may not be efficient or practical for those providers. If so, this should not hinder reform for the rest of the industry.

Reverse auctions are an interesting concept worthy of close examination, but their use should be approached with caution. Although using reverse auctions to size the universal service need for a particular service area and service offering is worth exploring, as the record in this proceeding indicates, designing such an auction framework and process is a complex matter. As

[10] *See, e.g.*, Presentation of Brian K. Staihr, Regulatory Economist – Embarq, Federal-State Joint Board on Universal Service *En Banc* Hearing (February 20, 2007).

[11] *See, e.g.*, Presentation of Jim Stegeman, CostQuest Associates, Federal-State Joint Board on Universal Service *En Banc* Hearing (February 20, 2007).

suggested above, if the Joint Board is inclined to recommend the use of reverse auctions it should start on a trial basis in areas with multiple mobile CETCs to select the one mobile CETC to receive support.

Institute Affordability Benchmark

Since the passage of the 1996 Act, many states have taken on the challenge of rebalancing rates, removing implicit support, establishing explicit universal service funds, and ensuring that rates remain affordable. Other states have not. Therefore, the Joint Board should recommend that the Commission adopt an affordability benchmark mechanism to encourage reasonable and comparable rates across the Nation. An affordability benchmark would better distribute the universal service burden across all consumers. The Joint Board or the Commission could develop their own benchmark or use as a starting point the one jointly developed for the Early Adopter Fund by state commissions and industry participants in the Commission's intercarrier compensation reform docket.[12] Affordability benchmarking would help ease the burden of the overall universal service fund and ensure equitable and sufficient support as required by the Act.

* * *

The Joint Board should recommend and the Commission should adopt reforms that fulfill the vision of universal service set out in the Act – to provide adequate explicit support for rural, high-cost areas to ensure reasonably comparable services at affordable rates. Unfortunately, the current rules cause irrational outcomes that negatively affect consumers in many high-cost areas and do not recognize the competitive realities of the marketplace. The Joint Board should not settle for freezing in place that broken and outdated system.

Sincerely,

/s/ Eric N. Einhorn

cc: Joint Board Members and Staff

[12] *See* Letter from State Commissions and Missoula Plan Supporters to Marlene Dortch, FCC, CC Docket No. 01-92 (filed Jan. 30, 2007).